

**CALIFORNIA BUILDING STANDARDS COMMISSION  
MEETING MINUTES**

**April 18, 2012**

**1. CALL TO ORDER**

Chair Caballero called the meeting to order at 10:00 a.m. at the Department of Consumer Affairs, 1625 North Market Blvd., First Floor Hearing Room, Sacramento, California 95834.

**ROLL CALL**

**Commissioners Present:**

Secretary Anna Caballero, Chair  
James Barthman  
Rose Conroy  
Stephen Jensen  
Danielle Paxson  
Richard Sawhill  
Richard Sierra  
Randy Twist

**Also Present:**

Jim McGowan, Executive Director  
Michael Nearman, Deputy Executive Director  
Stephanie Davis, Executive Assistant  
Kevin Day, Technical Analyst

Commissioner Conroy led the Commission in the Pledge of Allegiance.

Commissioner Sawhill reported that Vice-Chair Hasenin had not been reappointed, and that there was an opening for the position of Vice-Chair.

**MOTION:** Commissioner Sawhill moved approval of Commissioner Barthman as Vice-Chair. Commissioner Jensen seconded. Motion passed unanimously.

**2. APPROVAL OF THE JANUARY MEETING MINUTES**

**MOTION:** Commissioner Sawhill moved approval of the January 18, 2012 Meeting Minutes. Commissioner Paxson seconded. Motion passed with two abstentions.

**3. INTRODUCTION AND SWEARING-IN OF NEW COMMISSIONER –  
RICHARD SIERRA**

Richard Sierra came forward to be sworn in by Chair Caballero. She congratulated him on being the newest Commissioner.

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Commissioner Sierra introduced himself as a Business Manager for Laborers International Union of North America, based in San Bernardino County. Having joined the union in 1976, he is a third-generation member of the union. He has worked for a variety of contractors.

**4. PRESENTATION OF THE BAGLEY-KEENE OPEN MEETING ACT BY THE OFFICE OF THE ATTORNEY GENERAL**

Julia Bilaver, Deputy Attorney General, provided an overview of the Bagley-Keene Open Meeting Act for the CVSC commissioners and staff. Below is a summary.

- When the Legislature created the Building Standards Commission, it decided that building standards should be established by a group of people with different backgrounds, viewpoints and experiences. Decisions were to be made by building consensus – a process that takes time.
- The open meeting requirement consists of notices, public testimony, and access to the public meeting records. Closed sessions and serial meetings defeat the public's interest in participating in the process. If one believes that the public should be seated at the table, the Bagley-Keene requirements are much easier to embrace and remember.
- The Act applies to five different types of state bodies, including those created by statute, i.e., the BSC. It also applies to advisory bodies, which include the BSC's Green Building Committee and the Seismic Committee.
- Ms. Bilaver further described advisory bodies. If three members of an advisory body meet regularly outside of the public meeting to discuss Commission business, and the other Commissioners do not object, the three members have created an advisory body that should be subject to open meeting rules.

For this reason, the Office of the Attorney General advises that no more than two Commissioners should discuss Commission business outside of the public meeting; this is known as "The Rule of Two."

- When the Commission decides to delegate authority to two persons, and they have equal authority, the Commission has created a delegated body that is subject to the Act.
- The Act generally requires that meetings be open to the public. A *meeting* is generally a gathering of a majority of the Commissioners to deliberate on a matter under the jurisdiction of the Commission. This includes not only decision-making but also information-gathering.
- A *serial meeting* consists of a series of communications, each involving less than a majority of the Commissioners, but collectively involving a majority. It can occur through a channel of communications. It can also occur when one person acts as the hub of a wheel, communicating individually with different Commissioners or staff. A serial meeting can occur through representatives of Commissioners as well.

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- Technological communications create additional risks of repetitive serial meetings. It is a violation of the Act for a majority of the Commissioners to communicate electronically – through email, text, or otherwise – to deliberate on matters under the Commission’s jurisdiction.
- The philosophy behind the Act is to promote public participation in the deliberation process.
- As explained in the *Handy Guide to the Bagley-Keene Act*, staff briefings are discouraged. An exception is that staff may engage in business conversations with Commissioners, as long as the comments or positions of one Commissioner are not communicated to any other.
- Some types of meetings are not subject to the Act:
  - A conversation between a Commissioner and another person is not a meeting.
  - Social gatherings and conferences are not meetings as long as a majority of the Commissioners do not discuss Commission business.
  - Commissioners may attend Standing Committee meetings as observers only.
- The Act requires that meetings be noticed in advance, generally 10 calendar days. Meeting notices must be posted on the Internet and provided in writing to anyone requesting a copy. Notices must be provided in alternative formats upon request by any person with a disability.
- Notices must include an Agenda with brief descriptions of each item. Generally, items may not be added to the Agenda after the 10-day notice period. Items not on the Agenda may not be discussed at the meeting.
- Special rules apply to meetings at which a Commissioner appears by teleconference, or if there is a Closed Session item.
- Under the Act, the public has a list of rights:
  - To attend. Meeting locations must be accessible to all members of the public.
  - To attend without being charged a fee.
  - To attend anonymously.
  - To speak at the meeting on generally any topic under the jurisdiction of the Commission.
  - To criticize the Commission and its programs.  
(The Commission may adopt reasonable regulations to limit the amount of time allocated to each speaker.)
  - To record the meeting, unless it would disrupt the meeting.
  - To access public meeting records.
- The Act permits Closed Sessions in limited circumstances:
  - To discuss personnel matters.

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- To confer with legal counsel regarding pending litigation.
- Only Commissioners and essential support staff can attend.
- The Act has penalties and remedies for violations. It is possible to have a decision that was made in violation of the Act, declared null and void by a court.

**5. THE DIVISION OF THE STATE ARCHITECT'S PRESENTATION  
REGARDING THE DEVELOPMENT OF THEIR ACCESSIBILITY  
PROPOSAL**

Dennis Corelis, Division of the State Architect (DSA), gave a presentation on changing the accessibility portion of the code.

- The DSA has gone through the process of comparing the federal Americans with Disabilities Act (ADA) code to the California Building Code, and came up with approximately 2,500 lines of comparisons that are almost completed.
- The DSA went to the public and the stakeholders to ask what approach the DSA should be taking in terms of reorganizing the code for the coming years, in order to eliminate confusion and problems.
- The stakeholders chose to use the federal ADA format for California's code.
- Consultants analyzed the code and devised a matrix that compares all of the items in the federal and state codes.
- The DSA is not proposing any substantive changes in the code. They hope to present the code to the BSC for review and approval in September.
- In the meantime, in order to engage the public in the process, the DSA has scheduled seven videoconference workshops around the state. The DSA is also planning to do some outreach presentations to the general public.

Tom Duffy of the Coalition for Adequate School Housing (CASH) stated that body's support for the proposal. They have been in communication with the DSA's office for some months, and believe that this resolution is appropriate for the issue. It provides an opportunity for schools to deal with the issue of accommodating students and teachers with disabilities while we look for the next code adoption.

CASH is made up of about 500 school districts as well as those who serve school districts such as architects. ADA is something that figures prominently as California's 10,000 schools are modified and repaired.

Steve Newsom, a practicing architect who works primarily on K-12 buildings, stated that almost everything he does is regulated by the DSA. For a long time a conundrum has existed between the ADA and the California state codes. In rare circumstances, documents could be in compliance with state requirements but out of compliance with federal requirements – a huge liability for architects and owners.

Mr. Newsom stated support for the direction in which the DSA is headed by utilizing the ADA model. As a CASH Board member, he felt that this report was great news.

**Public Comment**

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- Richard Skaff(via teleconference), an employee of the City of San Francisco involved in the development of California building codes, state fire codes, and housing codes, expressed concern that captioning was not provided for the meeting.

He continued that failures in design and construction occur not because the ADA has not been assimilated into California Title 24; they are caused by a lack of knowledge and understanding on the part of architects and contractors, and the complete lack of oversight.

He also commented that most of the documents on the BSC website are only in pdf format. All the code-writing agencies have been told that this is a non-accessible format.

- Eugene Lozano (via teleconference), First Vice President of the California Council of the Blind, stated that the DSA has been transparent over the years about changes. However, he had received no notification about the workshops although he is a member of DSA's Advisory Access Committee. He also wished to have access to the code comparison matrix.
- Sharon Toji of Access Communications commented that Senator Feinstein is unaware of the legislation passed in California, and unaware of the Certified Access Specialist (CASP) program. Ms. Toji questioned the amount of education getting disseminated to the general public and businesses.

**6. PROPOSED EMERGENCY STANDARDS ADOPTIONS AND APPROVALS**

**a) The Division of the State Architect – Access Compliance (DSA/AC EF 01/12)**

**i) Action for finding of emergency**

Mr. Corelis stated that in reviewing the code and finding the 2500 items, DSA's consultant had found seven items that showed direct conflict between federal and state requirements. The California triennial code update will not go into effect until January 2014. We have a period of approximately 21 months during which architects, engineers, contractors, and owners all face a dilemma as to which direction to go.

This could have a major impact on school buildings and all other projects across the state. We need to make some changes on an emergency basis.

In addition to the seven items, DSA has a temporary relief item: they found one typographical error in the last update, which is causing major problems for seating in auditoriums.

Commissioner Sawhill asked what would happen if the BSC did not adopt these emergency regulations. Mr. Corelis replied that the DSA and all building departments throughout the state are obligated to follow California Building Code requirements; however, they will be in violation of federal ADA requirements.

Commissioner Twist inquired as to which standard is the higher standard. Mr. Duffy replied that usually the more stringent requirement would be followed, so that you could comply with both. With the seven requirements in question, the differences cannot be reconciled.

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Mr. Corelis stated that the DSA cannot rework the items in question; they must meet the federal ADA requirements.

Commissioner Paxson asked how the seven issues have been vetted in the state of California. Mr. Duffy responded that they had been vetted through the American National Standards Institute (ANSI). Further, a major concern is that when you violate the ADA, it triggers other provisions in California law that expose building owners and other entities to lawsuits.

Mr. Corelis added that building owners must follow California law in order to get a California building permit. The DSA is trying to give building owners some guideline for the next 21 months left in the process.

**Public Comment**

- Kurt Cooknick, AIA California Council, stated support of the emergency proposal. He went on record with a question: If the Commission does decide to support the DSA's package, what will happen to the projects that are designed under the next section of code between now and the final action? There are no guarantees that today's package will look the same at the end of the process.

He continued that it would be preferable to have members here on the Commission representing Accessibility, Building Officials, and Architects.

- Kerwin Lee, an architect and member of the BSC Code Advisory Committee for Building, Fire and Other, stated that he had written a letter outlining his concern with the amount of information being presented for the emergency amendments. Item #9 was the most questionable item in the package.

The package does not go far enough; it doesn't address the key items; it provides a false sense of security that if you comply with the seven items, then you will be clear.

- Mr. Newsom stated support of the emergency proposal. He was gratified that the package reconciled liability by aligning with the ADA.
- Bob Raymer, Senior Engineer with the California Building Industry Association, stated support of the emergency proposal, as well as the DSA's efforts to try to reconcile the differences between the federal ADA regulations and California's regulations.
- Mr. Skaff described a situation in San Francisco regarding modification of bathrooms and wheelchair accessibility.
- Mr. Lozano agreed with the website access problem. He had contacted the BSC and the DSA regarding the need for a narrative description of the regulations, and had received the requested audiocassette tape.

He had submitted comments on behalf of the California Council of the Blind. He voiced difficulty with reading font styles that are condensed, e.g., tall and narrow. Also, characters need to retain a stroke thickness of 20% for legibility. Mr. Lozano explained several other suggestions regarding text and legibility for the sight-impaired.

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- Ms. Toji made additional clarifications regarding making typography and Braille accessible.
- Peter Margan, accessibility specialist, commented that the package falls far short of being an emergency. California has been functioning for the past 20 years with the standards of the ADA. The problem is that an old set of standards has been phased out and a new set is in effect. Trying to address them today will only scratch the surface, and it is unrealistic to think that we will have all the differences worked out by August.

In addition, the proposals before the Commission are not irreconcilable. Mr. Margan urged the Commission to reject the package, and discuss the new set of standards with all stakeholders.

- Jeremy Bruce, special education teacher, stated that in the past, whatever the code was, schools would frequently have to modify the classrooms and bathrooms to meet the needs of individual children. He felt that today's proposal was intended to find a way to resolve some issues that are getting in the way of the approval process for school planning.

Educators were stymied when the DSA could not tell them whether to follow state code or federal code. Every minor or major issue cannot be resolved today, but the proposal is a resolution for what is preventing the DSA's office from providing a sign-off on older buildings being modernized. Educators need a resolution, and today's proposal is the appropriate way to resolve this in the short term.

**DSA Response**

Mr. Corelis stated that he had confirmed that DSA could make minor tweaks in terms of Braille issues, etc. if DSA was going to try to conform to ADA requirements.

**Commissioner Comments**

Commissioner Sawhill commented that as no issue heard today had been a life and safety issue, he did not feel that the Commission had achieved the standard for an emergency adoption. For this reason, he would cast a 'no' vote.

Chair Caballero stated that she had a significant packet of emails and letters that individuals had sent. She appreciated their interest.

She commented that the challenge of dealing with the six conflicting items was the finding of emergency. Today's finding was not the end of the process – it starts the process to be able to go through a rulemaking set of hearings for people to be able to resolve and tweak the items; and there are 2500 other issues to be dealt with as well. The goal is to protect the rights of the disabled.

Commissioner Conroy commented that she would be interested in learning the past precedents of emergency findings. She voiced concern about the process – the BSC Accessibility Committee had not seen the package. Mr. Corelis informed her that the DSA Accessibility Committee and others had seen it; ten nationally recognized experts – consultants, lawyers, architects, etc. – had been working on it.

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Executive Director McGowan stated that a finding of emergency specified in the Administrative Procedure Act was “*for the immediate preservation of the peace, health, safety, or general welfare.*” The question for the Commission was whether the criteria put forth in today’s discussion met that specified criteria.

Commissioner Sawhill informed Commissioner Conroy that from time to time, emergency provisions had come before the Commission. Frequently they addressed life and safety issues, and the provisions were passed. However, occasionally they did not address those issues and were not approved.

He continued that this issue had gone on for a long period of time, and there was conflict among stakeholders regarding who has had the opportunity to provide comment. Public commenters had also raised issues today about the emergency standard.

**MOTION:** Commissioner Sawhill moved to deny the request for emergency based on the evidence presented. Commissioner Jensen seconded. Motion failed with two ayes and four noes.

Commissioner Barthman stated that he would like to hear the concerns of the disabled community before the Commission takes up the issue again.

**MOTION:** Commissioner Barthman moved to take no action. Commissioner Conroy seconded. Motion passed unanimously.

The Commission directed the State Architect to meet with the disabled community for discussion, and bring the issue back to the Commission to be considered as an emergency at a later time.

**ii) Action for the adoption of the proposed regulations**

As the Commission voted No Action on Item 6 a)i), the discussion was ended.

**7. CODE ADVISORY COMMITTEE MEMBER SELECTION**

Commissioner Barthman stated that the Code Change Committee had met earlier regarding some vacancies. The Building, Fire and Other Committee picked Steve Burger from the City of Folsom. Health Facilities picked Ron Beehler from the City of American Canyon.

**MOTION:** Commissioner Barthman moved to accept the two applicants. Commissioner Paxson seconded. Motion passed unanimously.

Commissioner Barthman stated that a new Chair was needed for the Building, Fire and Other Committee. He recommended Kerwin Lee, a well-regarded member of the committee for a number of years.

**MOTION:** Commissioner Barthman moved to accept Kerwin Lee as Chair of the Building, Fire and Other Committee. Commissioner Sawhill seconded. Motion passed unanimously.

**8. MODIFICATIONS TO CODE ADVISORY COMMITTEE MEMBER DESIGNATIONS**

**a) Plumbing, Electrical, Mechanical and Energy (PEME) & Green Building Code Advisory Committees**

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Commissioner Barthman said that he felt that the PEME Committee needed more representation from the plumbing industry, and suggested adding such a position.

Executive Director McGowan stated that in order for the Commission to add a committee member, a rulemaking must be prepared; this allows for public vetting.

Tom Enslow of the California State Pipe Trades Council pointed out that for a number of years, the absence of a plumbing representative on the PEME Committee had been a problem.

**MOTION:** Commissioner Barthman moved to direct staff to start the rulemaking process to add the position. Commissioner Sawhill seconded. Motion passed unanimously.

**b) Construction Material Supplier position (e.g. Public Member/Construction Materials)**

Charley Rea of the California Construction and Industrial Materials Association stated that a Construction Material Supplier position would be useful for the Code Advisory Committee.

Mr. Enslow voiced concern that the perspective of such a member is already covered by engineers and other professionals on the Code Advisory Committee. Commissioner Paxson agreed that the proposed position seemed a bit too specific and representative of a special interest.

**9. FUTURE AGENDA ITEMS**

No future agenda items were discussed.

**10. COMMENTS FROM THE PUBLIC ON ISSUES NOT ON THIS AGENDA**

There was no public comment.

**11. ADJOURN**

Commissioner Sawhill asked that the meeting be adjourned in memory of those who died 106 years ago today in the Great San Francisco Earthquake.

Chair Caballero adjourned the meeting at approximately 12:28 p.m.